

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff(s),

CASE NUMBER: 05-80025  
HONORABLE VICTORIA A. ROBERTS

v.

D-3 KEVIN WATSON,

Defendant(s).

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**ORDER**  
(REGARDING DOCUMENT #189)

**I. INTRODUCTION**

This matter is before the Court on Defendant Kevin Watson's ("Watson") "Motion to Strike Section C(4) of the Notice of Intent to Seek the Death Penalty as to Defendant, Kevin Watson and to Bar Presentation of Evidence of Claimed 'Lack of Remorse' Should the Defendant not Testify at Trial with Incorporated Brief" (Doc. #189). Oral argument was heard on October 18, 2007.

Watson's motion is **GRANTED IN PART** and the Court **RESERVES RULING IN PART**.

**II. ARGUMENTS AND ANALYSIS**

Section C(4) of the Government's "Notice of Intent to Seek the Death Penalty as to Defendant, Kevin Watson" ("Notice of Intent") includes the non-statutory aggravating factor, "Lack of remorse: Defendant has shown no remorse for killing Stephens."

Watson says the Court should strike this factor because the Government will use

his post-arrest silence to prove lack of remorse. Watson argues this violates his Fifth Amendment rights. In its response, the Government agreed that it cannot use Watson's post-arrest silence to prove lack of remorse. It also agreed not to argue "lack of remorse" as a separate non-statutory aggravating factor. Hence, the Court **STRIKES section C(4)** from Watson's Notice of Intent.

Watson also argues the Court should preclude the Government from presenting *any* evidence of alleged lack of remorse. The Government disagrees and says it may introduce Watson's post-arrest conduct – including statements he made to cell mates and an alleged comment that LaTonya Smith overheard – as "lack of remorse" evidence to support a finding of future dangerousness. During oral argument, Watson's counsel argued that the alleged comment may be more prejudicial than probative.

The parties agree that discovery will be conducted; the Government will determine and reveal what "lack of remorse" evidence it intends to present in support of the "future dangerousness" non-statutory aggravating factor.

### **III. CONCLUSION**

The Court **GRANTS** Watson's motion to strike "lack of remorse" as a non-statutory aggravating factor; section C(4) is stricken from Watson's Notice of Intent.

The Court **RESERVES ITS RULING** on the balance of Watson's motion. The parties will attempt to reach an agreement regarding the "lack of remorse" evidence the Government may present to support "future dangerousness."

**IT IS ORDERED.**

/s/ Victoria A. Roberts

Victoria A. Roberts  
United States District Judge

Dated: December 28, 2007